

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 129 OF 2003

Shri Rajaram Rau Patil, of Kumathe,
 aged about 73 years, occupation
 agriculture, r/o. Maida, Post Kurdi,
 Taluka Sanguem, Goa and occasionally
 at 776, near Khanbhag Police Chowki,
 Khanbhag, Sangli 416 416
 (Maharashtra State).

..... Petitioner.

V/s.

1. Shri Marcel de Pieade Braganza,
 aged about 73 years, landlord,
 r/o. Malbhat, Margao, Goa.
2. Smt. Maria Amalia Violanda Baetuz
 Mascarenhas Braganza, wife of
 Marcel de Pieade Braganza aged about
 72 years, occupation household work,
 r/o. Malbhat, Margao, Goa.

(stand deleted as per Order dated 20.3.03).

3. Smt. Ponnamma Cherian (since deceased)
 represented by heirs :

- 3a. Shri T.K Cherian,
- 3b. Shri Mathew P Cherian,
- 3c. Mrs. Jessy Paul,
- 3d. Dr. Paul P. Babu,
- 3e. Mrs. Susy Thomas,
- 3f. Dr. E. Thomas,
- 3g. Shri T.C. Kochukoshy,
- 3h. Mrs. Susa Kochukoshy.

All major, occupation of all business,
 all r/o Pondakosalayil,
 Bellteaven, Trivendrum, Kerala.

4. C.M. Mathew, age major, occupation
 business c/o. Adv. D.R. Duple,
 Quepem, Goa.

Shri Mohammed Zacharia,
age major, occupation business,
C/o. Tropical Fibres, Sanguem, Goa.

6. Shri Anandrao Raosaheb Patil,
aged about 70 years, occupation
agriculture, r/o. Bilaskar Wada,
Near Gore Mangal Karyalaya,
Gaonbhag, Sangli,
Maharashtra State.

7. Shri Ganpati Dnyanu Jagdale,
aged about 70 years, occupation
agriculture, r/o. 'Maida' Post Kurdi,
Tal. Sanguem, Goa and occasionally
at Kosabe Digraj, Tal. Miraj,
District Sangli Maharashtra State.

..... Respondents.

Shri M.S. Sonak, Advocate for the petitioner.

Shri M.S. Usgaonkar, Sr. Advocate with Mr. Sudesh Usgaonkar, Advocate
for respondents No.3(a) to 3(h).

Respondent No.6 though served, absent.

Shri P.A. Kholkar, Advocate for respondent No.7.

CORAM : S.S. PARKAR, J.

DATE : 9TH JUNE, 2005.

ORAL JUDGMENT :

Rule. By consent, rule is made returnable forthwith. By
consent of the parties, the petition is heard finally and is being finally
disposed of. Counsel for the respondents waive service.

2. This petition is filed challenging the Order dated 12th March,

2003, disallowing the application dated 20/2/2003 made on behalf of the plaintiff to frame issue of tenancy. That application was made in the following circumstances :

The suit was filed by the plaintiff/petitioner for a declaration that he was a lessee of an agricultural land, leased to him by defendants No.1 and 2 who had in the agreement for sale agreed to sell the said land to the plaintiff. Defendant No.3 was impleaded in the suit as the person to whom the said property was sold by defendants No.1 and 2. It was the case of the petitioner/plaintiff that since he is the tenant in respect of the agricultural land and because of the clause in the lease deed, defendant Nos.1 and 2 could not have sold the property to defendant No.3. After institution of the suit, defendant No.3 also sold the suit property to the parties who are proposed to be impleaded as party defendants.

2. Since the plaintiff is claiming to be a tenant of the suit land which is an agricultural land and the defendants had denied that he is a tenant of the suit land, an application was made to frame the issue of tenancy and refer the same to the Tenancy Court under the provisions of the Goa, Daman and Diu, Agricultural Tenancy Act, 1964 (hereinafter, referred to as 'the Tenancy Act'). The application had to be made because in the written statement the claim of the petitioner/plaintiff as tenant of the agricultural land was denied. That application having

been rejected by the trial Court by the impugned Order, the present petition is filed.

3. In order to succeed in the suit, the plaintiff has to establish that he was an agricultural tenant within the meaning of the the provisions of the Tenancy Act, in which case he is entitled to have first option to purchase the property which was leased to him and the same cannot be sold to any third party unless he does not exercise that option and the requisite permission under the Tenancy Act is obtained. It is not in dispute that neither the defendant No.3 nor the persons to whom defendant No.3 had sold the property are tenants as such. A reference may be made in this respect to the provisions of Section 13-A of the Tenancy Act whereby a tenant has a first option to purchase the agricultural land when the landlord intends to sell any land cultivated by a tenant.

4. The application was rejected on two grounds. Firstly by relying on the decision of this Court in the case of **Arjun Mahadev Manjrekar through his LRs. vs. Ramchandra Chimno Padwal**, (1990 (1) Goa L.T. 243) the trial Court held that such issue can be framed and referred to the Tenancy Court only if the defendant claims tenancy. That was a case where the suit was filed by the landlord and the defendant claimed to be the tenant. This Court held that the Civil Court had to necessarily

frame the issue of tenancy. The trial Court has misunderstood the aforesaid Judgment. Simply because in that case the issue arose because of the claim made by the defendant to be tenant within the provisions of the Tenancy Act, does not mean that the issue can be raised or referred to the Tenancy Court only when the defendant claims tenancy right.

5. Section 7 of the Tenancy Act reads as under ;

“ Question of tenancy- If any question arises whether any person is a [or was] tenant or should be deemed to be a tenant under this Act the Mamlatdar shall, after holding an inquiry, decide such question”.

Section 7 provides that if any question arises whether any person is or was tenant or should be deemed to be a tenant under the Act the Mamlatdar shall, after holding an inquiry, decide such question. Section 68 of the Tenancy Act bars the jurisdiction of any other Court, except that of the Mamlatdar, Tribunal, Collector or Government to deal with or decide the question arising under the provisions of the Tenancy Act. In this case, since the claim of the plaintiff to be the tenant in respect of the suit land which is an agricultural land, is denied by the defendant, the issue of tenancy arises within the meaning of Section 7 of the Tenancy Act, which has to be decided by the competent authority under the Tenancy Act.

6. The learned Counsel appearing for the respondents, however, by referring to paragraph 9 of the Judgment of the Supreme Court in the case of ***Shri Inacio Martins, Deceased through LRs. vs. Narayan Hari Naik and ors.*** (AIR 1993 SC 1756), contended that in such a case, the petitioner ought to have filed proceedings in the Mamlatdar's Court and got himself declared as tenant within the meaning of the Tenancy Act. According to him, the plaintiff should have moved the Mamlatdar's Court for deciding the question of his tenancy instead of filing suit in the Civil Court and asking the Civil Court to refer the issue of tenancy. In my view, that is not the ratio laid down by the Apex Court in the aforesaid case. In paragraph 9, the Supreme Court, in terms, has held that the issue whether the defendant was a tenant in respect of the lands in question should be referred to the Mamlatdar for decision and after his decision is received by the Civil Court, if the issue is held against the defendant, the Civil Court may consider passing of a decree in eviction. But, if, on the other hand he is held to be tenant, the Civil Court may be required to dismiss the suit. In paragraph 10 of the aforesaid Judgment, the Supreme Court has observed that in a situation where a person who is a deemed tenant, is evicted from the the land, he has to approach the Mamlatdar under the provisions of the Tenancy Act and not the Civil Court for recovery of the possession of the land of which he has been dispossessed. It cannot be forgotten that in this case, the

plaintiff had moved the Civil Court for enforcement of his right under the lease agreement entered into with the original owners i.e. defendants No.1 and 2 in which there is a clause whereby the plaintiff/petitioner was entitled to purchase the land. It is for the enforcement of that clause in the agreement that the Civil Suit was essentially instituted by the plaintiff in the Civil Court as defendant Nos. 1 and 2 had sold the land to defendant No.3. The issue of tenancy arose only because defendants No.3 and 4 in their written statement denied that the plaintiff was a tenant. Defendants No.1 and 2 had died before filing of the written statement. Therefore, the argument advanced on behalf of the respondents that the plaintiff ought to have initially filed the proceedings in the Tenancy Court is without any merit.

7. Reliance is placed on behalf of the petitioner on the two Judgments of the Supreme Court, one in the case of ***Gundaji Satwaji Shinde vs. Ramchandra Bhikaji Joshi*** ((1979) 2 SCC 495) and second, in the case of ***Pandurang Ramchandra Mandlik (since deceased) by his LRs. and anr. vs. Shantibai Ramchandra Ghatge and ors.*** (1989 Supp (2) SCC 627), in which it has been held that even the issue arising in a Civil Suit regarding the tenancy has to be decided by the competent authority, under the Tenancy Act on reference made to it by the Civil Court.

8. The other ground on which the application was dismissed by

the trial Court is that the framing of the issue about the tenancy proposed previously on behalf of the plaintiff was disallowed by earlier Order of the trial Court dated 5.2.2003. There was no application made earlier to frame such issue for reference to the Tenancy Court. The plaintiff had only requested the Court to frame an additional issue about tenancy which was declined by the Court and, therefore, that cannot be the ground to reject the application dated 20.2.2003. When such an issue arises on the pleadings of parties in a civil suit, the jurisdiction of the Civil Court having been ousted from deciding such issue, reference has to be made to the Authority Competent to decide the same under the provisions of the Tenancy Act. The question of return of plaint contemplated under Order 7, Rule 10 of C.P. C. also does not arise at all in this case as contended on behalf of the respondents, as the suit was essentially filed for enforcement of a clause in the agreement entered into between the plaintiff and original defendant Nos. 1 and 2 whereby the latter had agreed to sell the suit land to the plaintiff.

9. In the result, the petition is allowed. Rule is made absolute in terms of prayer clause (a) of the petition. In the circumstances of the case, there shall be no order as to costs.

S.S. PARKAR, J.

ssm.